

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

OP.No. 14473 of 1998(Y)

PETITIONER:

THE CANARA BANK, MANNARKKAD BRANCH,
PALAKKAD DISTRICT, REPRESENTED BY MANAGER.

BY ADV. SRI.M.C.SEN (SR.)
SMT.SHAHNA KARTHIKEYAN
SRI.A.PARVATHI MENON

RESPONDENTS:

1. THE ASSISTANT COMMISSIONER OF CUSTOMS
PREVENTIVE WING, CUSTOMS HOUSE, KOCHI.
2. DISTRICT COLLECTOR, PALAKKAD.
3. TAHSILDAR, MANNARKKAD.
4. SRI.K.MOHAMMED ALI, S/O. KAPPUNGAL MUHAMMADUNNI HAJI,
PILACHLA, ALANALLUR AMSOM AND DESOM IN
MANNARKKAD TALUK.
5. AASSYA UMMA, W/O. MOHAMMED ALI,
--DO--DO--

BY ADV. SRI.P.S.SREEDHARAN PILLAI, SCGSC
SRI.SUNNY VARGHESE
SRI.JOHN VARGHESE, ASSISTANT SG
SMT. R.BINDU, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

O.P.No. 14473/1998

ORDER ON CMP NO. 25573/1998 IN O.P.No. 14473/1998

DISMISSED.

15/03/2007

SD/- (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 COPY OF THE ORDER IN I.A.No 621/92 IN O.S.No. 193/89 ON THE FILE OF THE SUB COURT, OTTAPPALAM DATED 08/10/1992.

EXT.P2 COPY OF THE JUDGMENT DATED 30/6/98 IN CMA NO. 279/1992 OF THIS HON'BLE COURT.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 14473 of 1998 W

Dated, this the 15th day of March, 2007

J U D G M E N T

Petitioner is challenging recovery proceedings for recovery of arrears of customs duty due from respondents 4 & 5. According to the petitioner attached property partly sold and balance yet to be sold, were mortgaged to the petitioner Bank by the owners against an advance of Rs. 1 lakh given to them and the Bank has secured decree in its favour. In other words, petitioner's case is that the Bank has charge over the property and therefore the same should not be sold in recovery proceedings for recovery of import duty payable by the land owners. Asst. Solicitor General contended that the Government of India has priority over mortgage debt and therefore sale proceeds should be first adjusted towards arrears due to Central Government. This Court while permitting sale of some property directed detention of money by the recovery authorities separately. It is not known whether payment is released either to the Bank or to the Central Government. In any case, I do not think there is any need for this Court to decide the matter first

because recovery authority, namely Tahsildar himself can decide the priority claimed by the Bank over arrears of duty payable to Central Government. There are also several decisions on priority namely that of Supreme Court of India in **Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Company and another** reported in 2000 (5) SCC 694, and later decisions of this Court. In the circumstance, this Original Petition is disposed of directing the Tahsildar to sell the entire properties of the defaulter and release it either to the Petitioner or to the Central Government only after deciding the priority claimed by the Bank, which it is free to raise through a claim petition before the 3rd respondent. The 3rd respondent shall hear the petitioner as well as the 1st respondent, go through the documents, statutory provisions and also Court Decisions before finally deciding the matter.

This O.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)